IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12203 of 2001

with

SPECIAL CIVIL APPLICATION No 12204 of 2001

with

SPECIAL CIVIL APPLICATION No 12205 of 2001

with

SPECIAL CIVIL APPLICATION No 12206 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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JAYANTILAL SHANABHAI SHAH

Versus

AMBIKABEN SHIVSHANKAR TRIVEDI

Appearance:

1. Special Civil Application No. 12203 of 2001
MR RAVINDRA SHAH for Petitioner No. 1-5

MR RAMNARAIN RAI for Respondent No. 1
MR KN PATEL for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/07/2002

COMMON ORAL JUDGEMENT

1. Mr.Ravindra R. Shah, learned Counsel appearing for the petitioners, states that petitioner No.5 has expired on 28-12-2001 and his legal heirs are not desirous of persuing the matter and, therefore, he submits that the matter may be treated as for petitioners No.1 to 4 only. Mr.Shah further states that the rule is served by direct service and some of the respondents have refused and the affidavit of service of rule including for refusal is filed and taken on record.

2. Since in all these petitions common facts and common questions are involved, they are being dealt with together.

3. The contention raised by the petitioners is that the Managing Committee of respondent No.2 Society, Mathuriyanagar Cooperative Housing Society (referred hereinafter as "the Society") has entered into the settlement contrary to and dehors the resolution passed by the General Body of the society.

4. The short facts of the case are that the petitioners are the members of the society and Lavad Suits No.95/1996, 96/1996, 97/1996 and 98/1996 were filed by the Society for the removal of the enchroachment over the land belong to the society. In all the aforesaid lavad suits, a settlement purshis was submitted on 26-2-1997, whereby it was declared that if the amount is not deposited by the concerned member as per the resolution dated 25-2-1997, the society shall be at liberty to remove the construction. The learned Nominee recorded the same and passed the consent award on the same day in terms of the purshis given by the society and the concerned member(s).

5. The petitioenr herein and one Ratilal Shanabhai Shah, who was initially petitioner No.5 and who has expired on 28-12-2001, preferred an appeal before the Gujarat State Cooperative Tribunal against the consent award dated 26-2-1997 passed by the learned Nominee in

the aforesaid suits, claiming that they are aggrieved by the order. However, since they were not party to the lavad suits, the application for leave to prefer appeal were submitted being Misc. Applications No.2/1997 to 5/1997. The contention of the petitioners herein before the Tribunal (who were applicants before the Tribunal) was that the resolution on the basis of which the settlement has taken place is contrary to the resolution of the General Body dated 25-12-1996, whereby it was resolved that no lavad suit proceedings should be withdrawn without prior approval of the General Body and it was the case of the petitioners herein before the Tribunal that though the General Body's resolution dated 25-12-1996 was already on record in the proceedings of the suits, the learned Nominee has allowed the suits to be compromised and in any case the society should not have compromised the suits on the basis of the resolution dated 25-12-1996 of the managing committee, which is contrary to the resolution of the General Body. The learned Tribunal, as per the order dated 31-3-2000, held that the oder of settlement is not effecting the rights of the petitioners herein and, therefore, they cannot said to be aggrieved parties and, therefore, the applications for leave to appeal were dismissed. The petitioners herein also preferred review applications being No.12/2000 and 15/2000 before the Tribunal. However, ultimately the said review applications also came to be dismissed as per the order dated 27-8-2001. Under these circumstances, the petitioners have preferred the present petitions. Since there were four lavad suits, four appeals with the applications for leave to prefer appeal and four review applications, therefore, four seperate petitions are preferred.

6. When the matter is taken up for final hearing, on behalf of the Society Mr.K.M.Patel, learned Counsel has submitted that, as a matter of fact, the resolution dated 25-2-1997 on the basis of which settlement has taken place is not at all there in the original record of the lavad suits. That apart, even if such resolution exists in the record of the lavad suits, then also the case of the Society is that the resolution is passed by the Managing Committee of the Society. As per the scheme of the Act, the Managing Committee has to act as per the resolutions and rather implement the decisions of the General Body. If the General Body has taken decision not to withdraw or settle the suits without express permission of the General Body, the Managing Committee, in any case, cannot act contrary to the decision of the General Body of the society. So far as the internal management of the society is concerned the General Body

is the supreme authority subject to the provisions of the Act, the Rules and By-laws. In that view of the matter, since the consent purshis, which is produced before the Nominee is without being supported by the record of the lavad suits and, in any event, when the General Boady's resolution dated 25-12-1996 is already there on record, the Nominee could not have acted upon. The aforesaid aspect of the case is also not properly considred by the Tribunal. Therefore, I am of the view that the learned Nominee as well as the Tribunal have committed error which is apparent at the face of the record, so far as that part is concerned.

7. Further, the Tribunal has also not properly considered the status of the petitioners as the members of the Cooperative Housing Society in a matter, where the Society or the office-bearers of the Society have entered into the settlement with any other member in any proceedings without taking the affected members into confidence in the matter of removal of enchroachment over land of society. It will not be out of place to mention that in a Cooperative Housing society, the rights of the members for enjoyment of the property are co-related and there are large number of common facilities, which every member is entitled to. Therefore, when any settlement is arrived or a decision is taken by office-bearers of the Society for settling any proceedings, which are likely to prejudice the interests or likely to affect the facilities or the enjoyment of the facilities of the other members, it cannot be said that such other members have no right to challenge the said action, nor it can be said that they are not aggrieved parties to the proceedings. In any case, they cannot be said to be totally strangers to the litigation and, therefore, the Tribunal ought not to have thrown away the appeal of the petitioners by rejecting the application for leave to prefer appeal. I am of the view that the Tribunal has committed error on the said aspects and the order of the Tribunal is also on that count deserves to be quashed.

8. Since both the sides, more particularly on behalf of the petitioners and on behalf of the Society, it has been agreed that the matter may be remanded to the Nominee for trial of the suits, instead of directing the Tribunal to decide the appeals, the matter is remanded to the Nominee and that would rather serve the ends of justice, because even if the Tribunal finds that the resolution dated 25-2-1997 was not there on the record of the suits and even if the Tribunal finds that the Managing Committee could not have exercised the power dehors the decision of the General Body, then also as the

consequence thereof, the Tribunal will have to remand the matter. Since all the suits are of 1996 and sufficient time has passed in the litigation and as the matter is pertaining to removal of the enchroachment, I find it proper that the matter should be remanded to the Nominee for deciding afresh.

9. In view of the above, the order dated 26-2-1997 passed by the Registrar's Board of Nominees in Lavad Suits No.95/1996 to 98/1996 and the order dated 31-3-2000 passed by the Gujarat State Cooperative Tribunal below MCAs No.2/1996 to 5/1997 are quashed and set aside and it is further directed that the Lavad Suits No.95/1996 to 98/1996 shall be restored to file and learned Nominee shall decide the Civil Suits in accordance with law, preferably within a period of six months from the date of receipt of the order of this Court. All these petitions are allowed to the aforesaid extent. Rule is made absolute to that extent. There shall be no order as to costs.

23-7-2002 (Jayant Patel, J.)

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